COMPENSABILITY OF PSYCHOLOGICAL PROBLEMS: PAST, PRESENT AND FUTURE

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I. OUTLINE SUMMARY

Disabilities and reasonably necessary medical care resulting from psychological injuries or illnesses are compensable as long as the psychological injury or illness is directly traceable to a physical injury. The same is true of psychological injuries or illnesses which pre-exist the physical injury. A compensable accident which aggravates, accelerates or intensifies the extant psychological condition is compensable as long as the aggravation is directly traceable to the physical injury. As long as these rules are satisfied, it is irrelevant what is the precise nature of the psychological injury or illness, or diagnosis. Death or disability resulting from suicide or a suicide attempt can also be compensable, under these rules, as long as the physical injury also "directly caused the claimant to become dominated by a disturbance of the mind of such severity as to override normal rational judgment." If the "directly traceable" test is satisfied, it does not matter if "financial, marital or other worries may have contributed thereto." Clearly, however, a psychological injury or illness caused by work-related stress or emotional strife will not be compensable under any circumstance, unless a compensable physical injury has occurred, and a causal connection to the psychological condition can be proven.

II. HOW THIS OUTLINE WORKS

The following will be a list of leading Appellate cases in Kansas dealing with psychological injuries in workers compensation. The first two pages will be sites to 13 cases with "bullet summaries" of the relevant holding. Each case is summarized in more detail on the pages that follow.

A. *Followill v. Emerson Elec. Co.*, 234 Kan. 791 (Kan. 1984)

Absent some physical injury, purely mental disorders or injuries sustained by an employee, though arising by accident and out of and in the course of employment, are not compensable personal injuries under the Kansas Workmen's Compensation Act.

B. *Love v. McDonald's Restaurant & Cigna Ins. Co.*, 13 Kan.App.2d 397 (1989)

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers Compensation Act, K.S.A. 44-501 *et seq.,* the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury. Overruling *Ruse v. State,* 10 Kan.App.2d 508, 708 P.2d 216 (1984). It is not necessary to prove a causal connection between the work performed and the neurosis.

C. *Adamson v. Davis Moore Datsun. Inc. & USF&G Co.,* 19 Kan.App.2d 301 (1994)

When there has been a physical accident or trauma, and claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis, the full disability including the effects of the neurosis is compensable. Functional impairment may be either physical or psychological.

A disability award must be based on the consideration of both physical and psychological impairment, but the increase, if any, which [19 Kan.App.2d 302] occurs when both physical and psychological impairments exist will depend on how each impairment affects the other.

D. *Beltran v. IBP. Inc.,* 95 P.3d 135 (Kan.App. 2004)(unpublished)

The proportion of functional ratings for physical injuries which are attributable to a psychological condition which is not causally related to the physical work injuries is not compensable.

E. *Boutwell v. Domino's Pizza & KS Work Comp Fund,* 25 Kan.App.2d 110 (1998)

Under the Workers Compensation Act, traumatic neurosis is to be treated like any other health problem. If a subsequent covered industrial accident aggravates, accelerates, or intensifies the disease or affliction, the worker is not to be denied compensation just because it is a pre-existing condition.

F. *Helmstetter v. Midwest Grain Products. Inc.,* 29 Kan.App.2d 278 (2001)

Disabilities resulting from psychological injuries are compensable when directly traceable to a compensable injury.

G. *Hutchens v. The Vyne at Crestview,* 103 P.3d 993 (2005)(unpublished)

In regard to suicide, the Court confirms that Kansas applies the three-part "chain of causation test" which requires the Claimant to prove:

1) Claimant must have suffered a work-related injury as defined in KSA 44-501(a)
2) Claimant's work-related injury must have directly caused the Claimant to become dominated by a disturbance of the mind of such severity as to override normal rational judgment.
3) Claimant's disturbance resulted in the suicide attempt.

H. *Rodriguez v. Henkle Drilling & Kansas Workers' Compensation Fund* 16 Kan.App.2d 728 (1992)

This is the first case that utilizes the three-part "chain of causation rule" as it relates to suicides. The Court affirmed the District Court's denial of benefits finding that the Claimant's widow did not sustain her burden of proof. The Court found substantial evidence supporting the denial of benefits such as the fact that the Claimant was having severe marital difficulties and that the KBI investigation revealed the deceased had a blood alcohol concentration of .18 and had cocaine in his system. The Court found this was substantial evidence showing the suicide resulted from the effects of alcohol, drugs and marital discord, and not the physical injuries.

I. *Howell v. State of Kansas,* 84 P. 3d 636 (Kan App. 2004)((unpublished)

This was a suicide case where the Court refused to overrule the line of cases that requires a physical injury and that the mental condition be a consequence of the physical injury. The Claimant's widow had Dr. Lacoursiere, psychiatrist, testify that the stress from his work caused lesions on his brain resulting in the psychological condition, depression and suicide. They argued that the lesions were a "physical injury." The Court of Appeals affirmed the Appeals

Board's denial on substantial evidence basis. The Court also pointed out there was no evidence of physical injury such as a brain autopsy and that the Claimant's theory was only speculation.

J. *Haves. v. Garvey Drilling Co.,* 360 P. 2d 889, 188 Kan. 179 (Kan. 1961)

A Claimant can review and modify a prior Award if the impairments from the work injury worsen and increase the Claimant's disability. Review and modification is appropriate if the compensable traumatic neurosis is the only condition that worsens and increases the Claimant's disability.

The Supreme Court also confirmed that, "Traumatic neurosis, following physical injury, long has been recognized as being compensable under workmans' compensation laws, and the rule is applicable to such injury even though financial and other worries play a part."

K. *Barr v. Builders Inc. & Hawkeye Security,* 179 Kan. 617 (1956)

Conversion Hysteria (traumatic neurosis) following physical injury long has been recognized as being compensable under workmen's compensation laws, not only in England from whence we took our compensation act but in this country under statutes quite like our own, even though financial, marital or other worries may have contributed thereto.

L. *Berger* v. *Hahner. Foreman & Cale, Inc.,* 211 Kan. 541 (Kan. 1973)

The Court held that a worker will not be deprived of compensation for disability arising from traumatic neurosis merely because it results from a scheduled rather than a non-scheduled injury.

M. *Nelson* v. *Capital City Moving and Storage,* 32 Kan.App.2d 566 (2004)

The Appeals Board found the Claimant permanently and totally disabled as a consequence of his physical injuries and pre-existing mental status. There is a discussion in the opinion about the odd-lot doctrine and whether pre-existing unrelated mental conditions should be considered in determining permanent total disability. The Court of Appeals found that the record lacked substantial evidence that the Claimant was totally disabled pointing to the fact that all the doctors testified the Claimant could perform the tasks of a truck driver, could map a route, check the schedule, inspect the truck, operate a forklift, and clean and pack shoes. The Court held that even considering Claimant's physical impairment and pre-existing mental condition, he retained a substantial earning capacity. The Court reversed the finding of permanent total and remanded with directions to find permanent partial disability.

II. SUMMARY OF CASES CITED ABOVE

***Followill* v. *Emerson Elec. Co.,* 234 Kan., 791 (Kan. 1984)**

Claimant Followill was a maintenance man at Emerson Electric in Independence. On 8-21-81, a friend and co-worker was killed. The man's head was crushed in a die-cast press. Followill did not see him get crushed; however, he arrived at the machine moments later. The scene was grizzly. Followill suffered no physical injury. Followill suffered severe PostTraumatic Stress Disorder, experienced nightmares, insomnia, flashbacks, etc. He was treated in-patient for about seven weeks. An initial electroencephalogram showed abnormal brain functions. After treatment, he improved and an EEG taken about a month later was normal. He was 100% disabled for a period of time and suffered a permanent 50% to 60% disability. The ALJ denied the claim since the claimant did not suffer physical injury. The District Court found the claimant was totally disabled for a period of time and that he sustained a 50% permanent partial general

disability and was awarded money based on the same.

The Supreme Court noted that the majority of states allow compensation for mental injury resulting solely from mental stimuli. However, the court held clearly and firmly that absent physical injury, mental impairment/disability is not compensable under Kansas Workers Compensation. They based this primarily on the definition of "personal injury" in the Work Comp Act. Therein it states that there must be any lesion or change in the "physical structure of the body".

***Love v. McDonald's Restaurant & Cigna Ins. Co.*, 13 Kan.App.2d 397 (1989)**

Claimant Love was working as a swing manager for McDonald's when she fell down three stairs injuring her head. She suffered headaches, dizziness, and numbness in her left arm. The parties stipulated that Love suffered a physical injury, had symptoms of traumatic neurosis and that the symptoms of the traumatic neurosis were directly traceable to the physical injury. Prior case law, namely *Ruse v. State,* 10 Kan.App. 2d 508, 708 P.2d 216 (1984), held four elements which must be met for a traumatic neurosis claim to be compensable:

(1) a physical injury;
(2) symptoms of traumatic neurosis;
(3) these symptoms are directly traceable to the physical injury; and
(4) a causal connection between the work performed and the neurosis.

The lower courts in *Love* denied the traumatic neurosis because the fourth element had not been proven.

The Court of Appeals reversed the lower decisions and reversed in part *Ruse.* They held that it is not necessary to prove a causal connection between the work performed and the neurosis and that they only needed to prove:

(1) a physical injury;
(2) symptoms of traumatic neurosis; and
(3) these symptoms are directly traceable to the physical injury.

***Adamson v. Davis Moore Datsun, Inc. & USF &G Co.*, 19 Kan.App.2d 301 (1994)**

Claimant Adamson was a used car salesman for Datsun. The initial diagnosis was a sprained left wrist with a chip fracture of the left radial styloid, which is the area at the base of the thumb. Over the next approximate ten years, this chip fracture snow-balled into injuries to the left elbow resulting in two surgeries, injuries to the left shoulder resulting in two surgeries, and ultimately a psychological injury. He was diagnosed with Somatoform pain disorder and depression. The various ratings for the psychological impairment were between 5% and 30%. The ALJ found that Adamson had a 20% psychological functional impairment; however, refused to combine the physical impairment with the psychological functional impairment. The District Court also refused to add or combine the functional impairment due to the

psychological condition with the physical functional impairment.

The Court of Appeals ruled that functional impairment may be either physical and/or psychological. The disability Award must be based on consideration of both physical and psychological impairment, but the increase, if any, which occurs when both physical and psychological impairments exist will depend on how each impairment affects the other.

***Beltran v. IBP. Inc.*, 95 P.3d 135 (Kan. App. 2004)**

The Claimant was a bone cleaner at IBP. She was hurt when her meat hook stuck in a carcass and she was struck by another carcass as it was moving by her station. The ALJ and the Board denied compensation for the psychological conditions as Dr. Blake Veenis (ALJ appointed independent medical evaluator) testified that the psychological conditions were not related to the physical injuries. Dr. Woltersdorf testified that her psychological condition actually pre-existed the injury. The Court of Appeals found this to be substantial evidence supporting the Board's denial of benefits.

Dr. Veenis also gave ratings for the physical injuries. He gave a 5% for the low back, 1% to the right upper extremity, 3% to the left upper extremity; all of which combined for an 8% permanent partial impairment to the body as a whole. The ALJ gave an Award for the 8% functional impairment. The Board reduced the Award to 2.4%. The Board reduced the Award because Dr. Veenis testified that 30% of the impairment rating was for the physical injuries and the remaining 70% of those ratings resulted from her psychological problems that were not related to the injuries. Thus, the Board reduced the functional impairment by 70% which reduced the Award from 8% to 2.4%. The Court of Appeals found that the Board's decision was supported by substantial evidence and affirmed.

***Boutwell v. Domino's Pizza & KS Work Camp Fund*, 25 Kan.App.2d 110 (1998)**

Claimant Boutwell had a pre-existing history of schizo-effective disorders. While delivering a pizza for Dominos, he was attacked in an attempted robbery and received nine knife-stab wounds. The attack resulted in injuries to his knees, loss of a kidney, and removal of part of his colon. The primary treating psychiatrist who had seen Boutwell before and after the attack testified. He stated that Boutwell's mental state deteriorated after the attack and that this deterioration was attributed to the stress resulting from the assault. He was diagnosed with Post-Traumatic Stress Disorder which worsened the symptoms of the preexisting schizo-effective disorder. Dr. Iberra increased Boutwell's diagnosed disability from 50% to 100%.

The Court held that traumatic neurosis is to be treated like any other health problem. If a subsequent covered industrial accident aggravates, accelerates, or intensifies the disease or affliction, the worker is not to be denied compensation just because it is a pre-existing condition.

Helmstetter v. Midwest Grain Products, Inc., **No. 84,437 (Kan.App., Feb. 2001)**

Claimant Helmstetter injured both arms in an explosion while at work. He had worked there 23 years and was involved in two prior explosions while at work. He returned to work after recovering but several months later, quit his job stating his reasons for leaving were a lot of stress, he was nervous, he was scared, and he thought he "could deal with it and it would go away, but it wasn't working". Dr. Hatcher testified that he diagnosed posttraumatic stress disorder and that the explosion was the causative precipitating event. Dr. Hatcher testified that it was reasonable for claimant to leave the plant as avoidance is sometimes the only way to deal with PTSD.

The ALJ and the Board awarded work disability. On appeal, Midwest Grain first argued that the claimant was not entitled to work disability as he had voluntarily left his employment when he could have bid on other jobs located in different departments. The Court of Appeals held that the evidence supported the fact that due to PTSD, the claimant needed to be away from the Midwest Grain plant entirely.

Midwest Grain next argued that claimant was not entitled to work disability because he demonstrated the ability to perform his pre-injury job. The Court of Appeals found that the evidence supported the fact that the claimant had to leave Midwest Grain due to the injury. Due to this, the claimant had an actual loss of earnings which is the current test. Ability or capacity to earn wages is the test only when a finding is made that a good-faith effort to find employment has not been made. The evidence supported that the claimant has acted in good faith and thus, actual wage loss is the test.

Hutchens v. The Vyne at Crestview, **103 P.3d 933 (Kan. App. 2005)**

The Claimant was physically assaulted at work. She was diagnosed with post-traumatic stress disorder and depression. The first issue was whether the Claimant was permanently totally disabled. The Court of Appeals summarized the testimony of Drs. Ruby, Steelberg and Schulman. All three of those experts testified that the Claimant was substantially impaired and could not work on a consistent day-in-day-out basis as a result of the psychological conditions. Dr. Schulman testified that the Claimant might be able to function a couple of hours, maybe a day, in a setting where there was not a lot of social interaction with other people, limited interruption with the public, and a well defined and clearly defined task. He also said the Claimant would require flexibility in her attendance at work because she may need to call in to be late or not work that day, depending on whether she is experiencing flashbacks or nightmares, or when something in her environment triggers her anxiety. The Court of Appeals stated that just because a Claimant might be able to perform some part-time, sedentary type work, does not invalidate a factual determination supporting a determination of permanent and total disability. The Court of Appeals found there was substantial evidence to support the finding of permanent total disability.

The next issue was whether the psychological condition itself should be found compensable and whether substantial evidence supported this. At the beginning of its' analysis, the Court of Appeals states that the phrase "traumatic neurosis" is a broad legal term and is not a specific psychiatric diagnosis. They further defined it as a neurotic condition

brought on by an injury. They state that to establish a compensable psychological claim, the Claimant must prove: 1) A work related physical injury; 2) symptoms of the traumatic neurosis; and 3) that the neurosis is directly traceable to the physical injury. The Court of Appeals again sites the testimony of Drs. Steelberg, Schulman and Ruby to the extent that the PTSD stemmed from the assault in her workplace. The Court of Appeals found these three doctors' testimony as substantial and affirmed.

The final issue was whether the Claimant's suicide attempt was compensable. The Court of Appeals sites ***Rodriguez v. Henkle Drilling and Supply Co.,*** 16 Kan.App.2d 728, (1992) where the Court held that "Where the injury and its consequences directly result in the workman's loss of normal judgment and domination by disturbance of the mind, causing the suicide, his suicide is compensable." The Court identifies the three-part chain of causation test to require the Claimant to prove 1) Claimant must have suffered a work related injury as defined in K.S.A 44-501(a); 2) Claimant's work related injury must have directly caused the Claimant to become dominated by a disturbance of the mind of such severity as to override normal rational judgment; and 3) Claimant's disturbance resulted in the suicide attempt. The Court again referred to the testimony of Drs. Schulman, Steelberg and Ruby to show that these three elements were met and affirmed the Board's decision that the suicide attempt was compensable.

Finally, the Court affirmed the Board's decision granting future medical for the traumatic neurosis until further Order of the Court.

Rodriguez v. Henkle Drilling & Kansas Workers' Compensation Fund
16 Kan.App.2d 728 (Kan. App. 1992)

The Claimant had two separate work accidents, injuring his right knee in one and his left forearm in the other. Approximately two years after the accidents, he committed suicide. The District Court affirmed lower decisions denying compensation for the suicide. The Court of Appeals adopted the "chain of causation rule." To be compensable there must be: 1) a work-related physical injury, 2) the work related injury directly caused the Claimant to become dominated by disturbance of the mind of such severity as to override normal rational judgment, and 3) the disturbance resulted in the suicide. In this case the surviving spouse testified that the deceased was a man in constant pain, felt worthless because he couldn't work, underwent radical mood swings and personality changes, he sank into depression, despair and hopelessness, culminating in suicide. The Court of Appeals basically upheld the denial of benefits because they found substantial evidence existed that supported the District Court's decision denying benefits. Such evidence included the fact that prior to the suicide the deceased was having severe marital difficulties as the wife had left him on two occasions during the final six weeks of his life. The last time was 13 days prior to his death when his wife moved to Texas because the deceased had threatened to kill her, himself and their daughter. On the day of his suicide the deceased telephoned the spouse begging her to return but she would not do so. The KBI investigation revealed that the deceased had a blood alcohol concentration of .18 and had cocaine in his system. The Court of Appeals found that there was substantial evidence the suicide was caused by a myriad of factors other than a mental disturbance arising from the physical injuries. They pointed out that substantial evidence showed that the suicide resulted from the effects of alcohol, drugs, and marital discord.

***Howell v. State of Kansas*, 84 P.3d 636 (Kan. App. 2004)**

The Claimant was a psychologist at Larned State Hospital. His job duties changed, requiring him to conduct sexual predator evaluations. This was very stressful. On 4/22/96 a patient sexually assaulted one of the nurses. The next day Galen Howell committed suicide.

The Court expresses sympathy to the surviving spouse but refuses to overrule the line of cases that requires a physical injury, and that the mental condition be a consequence of the physical injury. The Claimant's counsel had Dr. Lacoursiere testify that it was his opinion that the Claimant had suffered a series of accidents of a mental nature, i.e., the sexual attack on his employee and the complications of his new position. Dr. Lacoursiere testified that these accidents caused injury to Galen, in the nature of lesions to the neurological structure of the brain, causing harm thereto and eventually were of such severity to result in the suicide. The Claimant argued these brain lesions were a physical injury which led to the suicide. Dr. William Logan testified for the State. He stated that Galen had suffered depression for sometime and that Dr. Lacoursiere's theory was the subject of ongoing studies within the medical community rather than established medical fact. The Court also pointed out that although there was an autopsy performed, there were no studies specifically of the brain which may have identified any such lesions. They stated that the theory in regard to brain lesions was totally speculative. The Court sites the long line of cases requiring a physical injury and points out that the only way to change this would be for the Legislature to do so. The Court affirmed the denial of benefits.

***Hayes. v. Garvey Drilling Co.*, 360 P.2d 889, 188 Kan. 179 (Kan. 1961)**

Claimant fell and suffered severe injuries to his left leg, back, chest and was burned. On March 27, 1959 the Commissioner entered an Award based on a 25.4% permanent partial disability. On June 6, 1959 the Claimant filed an Application for Review and Modification. The Commissioner denied the Application for Review and Modification. Claimant appealed to the District Court. The District Court held that review and modification was appropriate and increased the Award to a 100% permanent total, based on an increase in disability from the traumatic neurosis. The Supreme Court affirmed the District Court. Basically, the doctor testified that the symptoms from the traumatic neurosis had worsened with time as the Claimant was having trouble dealing with lack of job, lack of money, etc. The Supreme Court confirmed that, "Traumatic neurosis, following physical injury, long has been recognized as being compensable under workmans' compensation laws, and the rule is applicable to such injury even though financial and other worries play a part." They also confirmed that it is settled that if a physical injury results in aggravation of a pre-existing psychological condition, it is compensable. Although the physical injuries didn't worsen, the disability from the worsening traumatic neurosis increased the disability, allowing review and modification to 100%.

***Barr v. Builders Inc. & Hawkeye Security*, 179 Kan. 617 (1956)**

Traumatic neurosis following physical injury long has been recognized as being compensable under workers compensation laws even though financial, common, marital, or other worries may have contributed thereto.

***Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541 (Kan. 1973)**

The Claimant was struck in the eye by a 2 X 4 board. The physical injury was a scheduled injury. He also suffered a traumatic neurosis which caused total disability. The examiner, Director, and District Court found that the injury was only a scheduled injury and he was only entitled to a functional impairment without compensation for the traumatic neurosis. The Supreme Court stated the issue was whether compensation must be limited to the statutory amount provided for the scheduled injury, notwithstanding evidence which the District Court found established that Claimant had suffered traumatic neurosis to such a degree that he was disabled. The Supreme Court found this to be a question of law. They reversed the lower Court and remanded with directions to enter an Award for total temporary disability as a consequence of the traumatic neurosis. The Court held that a workman will not be deprived of compensation for disability arising from traumatic neurosis merely because it results from a scheduled rather than a non-scheduled injury.

***Nelson v. Capital City Moving and Storage*, 32 Kan.App.2d 566 (2004)**

Nelson worked as a truck driver and laborer for Capital City for almost 25 years. He injured his back in March of 2001. He was provided part-time restricted duty until he was terminated.

The Appeals Board found Mr. Nelson permanently and totally disabled. They considered the limitations/restrictions from his back injury, as well as the preexisting mental condition. The preexisting mental condition involved borderline range in intellectual capacity, very limited reading and writing skills, and the fact that his work efforts at performing tasks could deteriorate quickly because he becomes anxious, dismayed and humiliated. Because of his mental limitations he was "only capable of performing the most simple and routine tasks, which involved limited problem solving."

The Respondent argued that there must be a causal connection between Nelson's preexisting mental condition and the work related physical injuries for the condition to be compensable and considered in the evaluation. The Court of Appeals found that there was not substantial evidence supporting permanent total disability and remanded the case with instructions to Award permanent partial disability. The Court of Appeals stated that even with his physical restrictions and mental limitations, Nelson possessed several marketable skills which could be used to obtain employment. One that they pointed to was the fact that he had a Commercial Drivers License, Class A, which allows him to drive heavy vehicles such as 18-wheel trucks and vehicles with more than 16 passengers. They pointed to the fact that the examining doctors testified that Nelson could still perform the essential tasks of driving a truck, that he could still map a route and check the schedule, inspect the truck's fluids, lights and brakes, operate a forklift, and clean and pack shoes. The Court of Appeals held that even with Nelson's physical impairment and his preexisting mental condition, he still retained a substantial earning capacity and did not meet the standard for permanent total disability. They remanded the case, directing an Award of permanent partial disability.

III. IMPACT ON ANALYSIS BY THE RECENT CHANGES IN THE LAW.

44-508. Definitions. As used in the workers compensation act:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

> (i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

(B) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more

probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

History: L. 1927, ch. 232, § 8; L. 1965, ch. 319, § 1; L. 1968, ch. 102, § 2; L. 1974, ch. 203, § 7; L. 1976, ch. 370, § 18; L. 1977, ch. 175, § 2; L. 1979, ch. 156, § 2; L. 1983, ch. 167, § 1; L. 1985, ch. 175, § 2; L. 1986, ch. 189, § 1; L. 1987, ch. 187, § 2; L. 1988, ch. 167, § 5; L. 1990, ch. 183, § 1; L. 1991, ch. 144, § 2; L. 1993, ch. 286, § 28; L. 1995, ch. 1, § 4; L. 1996, ch. 79, § 3; L. 1997, ch. 125, § 3; L. 1998, ch. 120, § 3; L. 2000, ch. 160, § 6; L. 2001, ch. 121, § 1; L. 2002, ch. 122, § 1; L. 2004, ch. 179, § 15; L. 2005, ch. 55, § 1; L. 2011, ch. 55, § 5; May 15.